THE HON'BLE MR JUSTICE R.SUBHASH REDDY

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WRIT PETITION NO : 17318 of 2001

Between:

Kalagara Vighneswararao

..... PETITIONER

AND

The Government of A.P. reptd by its Secretary,

Tribal Welfare Department, Secretariat, Hyderabad

and four others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

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WRIT PETITION NO : 17318 of 2001

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ORDER:

This writ petition is filed seeking a writ of certiorari to call for the records pertaining to the order passed by the Government in G.O.Ms.No.68, Social Welfare (LTR.1) Department, dated 30.07.2001, by which it has confirmed the order passed by the Special Deputy Collector, Tribal Welfare, Eluru, in S.R.No.26/78, dated 29.09.1978, as confirmed by the Agent to the Government, West Godavari, Eluru, under the provisions of the A.P. Scheduled Areas Land Transfer Regulations 1 of 1959 (for short 'the

Regulations 1/1959') as amended by Regulation 1 of 1970.

It is the case of the petitioner that he is the owner and possessor of the land admeasuring Ac.9-05 guntas situated in R.S.No.637 of Buttaigudem Village and Mandal, West Godavari District. It is stated that his late father had purchased the land in question from one Smt Gundumogula Kusumamba, W/o Laxmanarao, under an agreement of sale, dated 02.05.1969, and thereafter, he obtained a registered sale deed in the year 1975.

The Special Deputy Collector, Tribal Welfare, Eluru, basing on a report sent by the Special Deputy Tahsildar, Tribal Welfare, Eluru, initiated proceedings against the late father of the petitioner herein on the ground that he got transferred the property in question in violation of the provisions under sub-section-(1) of Section-3 of the Regulations 1/1959 and called for explanation from him, why he should not be evicted from the land in question, as the transfer was in contravention of the Regulations. The late father of the petitioner had filed the explanation. The Special Deputy Collector, Tribal Welfare, Eluru, ordered for eviction of the father of the petitioner from the land in question by an order, dated 29.09.1978, in S.R.No.26/78. As against the same, the father of the petitioner carried the matter in appeal before the Agent to Government i.e., District Collector, West Godavari at Eluru, as contemplated under the Regulations 1/1959. The appellate authority rejected the appeal by confirming the order passed by the primary authority. Then the matter was carried in revision before the Government. Though a copy of the sale agreement, dated 02.05.1969, was not filed before the primary and the appellate authorities, a copy of the same was filed before the revisional authority i.e., the Government. The revisional authority rejected the revision by recording a finding that the said sale agreement is between two non-tribals entered on 02.05.1969 and the same is not a valid document, inasmuch as the same was not registered. Further, making reference to the registered sale deed which was subsequently obtained on 24.06.1975, the revisional authority recorded a finding that the transaction is clearly hit by the

provisions of Section-3 (1)(a) of the Regulations 1/1959.

In this case, it is the case of the petitioner that his father had purchased the land in question from a non-tribal by entering into an agreement of sale on 02.05.1969 and was inducted into actual and physical possession of the same. But, however, subsequently registered sale deed was obtained on 24.06.1975.

In the instant case, it is submitted by Sri P.R.K.Amarendra Kumar, learned counsel appearing for the petitioner, that so far as the land in question is concerned, the same was purchased by the late father of the petitioner from a non-tribal by name Smt G.Kusumamba in the year 1969 i.e., on 02.05.1969 before the Regulations 1/1970 came into force, prohibiting transfer of the property to the non-tribals from 03.02.1970. It is further submitted by the learned counsel that registration of the agreement of sale with regard to the immovable properties is made compulsory only with effect from 01.04.1999 in view of the State amendment to the Registration Act by the Amending Act 4 of 1999. As such, it is submitted that the order of the revisional authority rejecting the agreement of sale only on the ground that the same was not registered is not sustainable in law. Further, it is submitted that whether the transfer was made in accordance with the Registration Act or not, is not a matter to be considered by the authority constituted under the Regulations, for the purpose of testing its validity with reference to the provisions under the Regulations 1/1959 as amended by Act 1 of 1970. In support of his argument, the learned counsel placed reliance on a Full Bench judgment of this Court in ***Gaddam Narasa Reddy Vs Special Deputy Collector, Adilabad*** as upheld by the Apex Court in ***Dy.Collector Vs. S.Venkata Ramanaiah***.

On the other hand, it is submitted by the learned Government Pleader that originally the fifth respondent-tribal was the owner of the property in question and the same was transferred by way of lease to one Karatam Rayudu and thereafter, he transferred the same in favour of his daughter-Smt Lakshmi Narasayamma as

Pasupukumkuma, from whom one G.Kusumamba had purchased it and thereafter sold the same to the father of the petitioner under an agreement of sale. As such, it is submitted that the very transfer by the tribal by way of lease and the subsequent possession of the land in question by the petitioner is in contravention of the Regulations and all the authorities have concurrently recorded a finding that the transfer, claimed by the petitioner, is in contravention of the Regulations. In that view of the matter, no case is made out to interfere, with the orders passed by the Special Deputy Collector as confirmed by the Agent to the Government and revisional authority, under Article 226 of the Constitution of India.

Heard the learned counsel for the petitioner and the learned Government Pleader, and perused the orders passed by the primary, appellate and revisional authorities and other relevant material on record.

At the first instance, the primary authority passed orders after issuing a show cause notice in Form-E under Rule-7(2) of the Regulations, 1969. In the said notice, there was no reference to any of the transfers alleged to have been made by the tribal by way of lease in 1924 or the subsequent transfer in 1954, and merely the petitioner was asked to explain why he should not be ejected form the schedule property on the ground that the transfer made in his favour was in violation of provisions of Sub-section-(1) of Section-3 of the Regulations 1/1959. With reference to the said show cause notice, it was the case of the petitioner that his late father had purchased the same from a non-tribal-G.Kusumamba on 02.05.1969. It is not disputed by the learned Government Pleader that so far as the transfer of the land in question in favour of the petitioner is concerned, there is no direct transfer from any tribal, but the same is by way of a registered sale deed preceded by an agreement of sale from one G.Kusumamba-a non-tribal.

It is now well settled by a Full Bench judgment of this Court in Gaddam Narasa Reddy's case (1 supra), as rightly relied by the

learned counsel for the petitioner, that so far as the transfer of the lands by the tribals in Andhra Pradesh is concerned, the same was prohibited only from 03.02.1970 and it is further held that the Regulations are prospective in operation but not retrospective.

I have perused a copy of the registered sale deed, dated 14.09.1975, under which the petitioner claimed to have purchased the land in question. It makes a reference to an agreement of sale entered on 02.05.1969.

Section-2(g) of the Regulations 1/1959 defines 'transfer' as follows:-

> 'Transfer' means mortgage with or without possession, lease, sale, gift, exchange, or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing.

From the above definition, it is very clear that the contract relating to property is also a transfer for the purpose of the Regulations. In that view of the matter, the registered sale deed, dated 14.09.1975, which was filed before the Government, in which a reference was made about the agreement of sale entered in the year 1969 i.e., on 02.05.1969, is also within the meaning of 'transfer'. In this case, the transfer was effected between two non-tribals in 1969 and the same is prior to the Regulations came into force and hence, the transfer of the land in question in favour of the petitioner cannot be said to be in violation of the provisions of the Regulations 1/1959 as amended by the Regulations 1/1970. Further, the revisional authority rejected the plea of the petitioner while examining the validity of transfer only on the ground that the agreement of sale, dated 02.05.1969, was not a registered one. So far as the agreement of sale for the properties relating to immovable properties is concerned, at that point of time, registration of the same was not compulsory. Only by virtue of the State amendment by Act 4 of 1999, registration of agreement of sale relating to immovable property was

made compulsory with effect from 01.04.1999. In that view of the matter also, rejecting the case of the petitioner only on the ground that the agreement of sale, dated 02.05.1969, was not registered is not valid and the same is not sustainable in law. Inasmuch as the earlier transfer is not subject matter of the scrutiny before the authorities and the original transferor-the tribal was not made as party to the proceedings and at no point of time enquiry was made with reference to the transfer effected by the tribal and his transferee, no eviction can be ordered straight-away against the petitioner. Further, it is also to be noted that whether the transfers were made in accordance with the provisions of the Registration Act or in accordance with the provisions of the Stamp Act or not, is not an aspect to be scrutinized by an authority constituted under the Regulations. Once it is proved that the transfer was effected prior to the Regulations have come into force, the authority constituted under the Regulations cannot pass orders of eviction against the petitioner inasmuch as from the evidence on record it is very clear that in this case agreement of sale i.e., transfer was effected in favour of the petitioner on 02.05.1969, i.e., prior to the Regulations have come into force. Further, the contract relating to sale is also a transfer within the meaning of Section-2(g) of the Regulations 1/1959 and hence, the agreement of sale in this case can also be termed as ‘transfer’, which was effected in 1969 before the Act 4 of 1999 came into force amending the provisions of the Registration Act. In that view of the matter, in this case, the transfer of the land in question in favour of the petitioner is not in violation of the Regulations as recorded by the authorities below.

For the foregoing reasons, the orders of eviction passed by the Special Deputy Collector, as confirmed by the appellate and revisional authorities, is liable to be set aside.

Accordingly, the writ petition is allowed and consequently, the orders of eviction, dated 29.09.1978, passed by the Special Deputy

Collector, Tribal Welfare, Eluru, in S.R.No.26/78, as confirmed by the appellate authority on 30.07.1983 and the revisional authority-the Government in G.O.Ms.No.68 Social Welfare (LTR.1) Department, dated 30.07.2001, are hereby set aside. No order as to costs.

_____ R.SUBHASH REDDY, J

05.01.2006

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